

**IN THE COURT OF APPEALS OF OHIO  
THIRD APPELLATE DISTRICT  
HANCOCK COUNTY**

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**STATE OF OHIO,**

**PLAINTIFF-APPELLEE,**

**CASE NO. 5-14-15**

**v.**

**JESSICA M. SIERRA,**

**OPINION**

**DEFENDANT-APPELLANT.**

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**STATE OF OHIO,**

**PLAINTIFF-APPELLEE,**

**CASE NO. 5-14-19**

**v.**

**JESSICA M. SIERRA,**

**OPINION**

**DEFENDANT-APPELLANT.**

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**STATE OF OHIO,**

**PLAINTIFF-APPELLEE,**

**CASE NO. 5-14-20**

**v.**

**JESSICA M. SIERRA,**

**OPINION**

**DEFENDANT-APPELLANT.**

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Case Nos. 5-14-15, 5-14-19, 5-14-20, 5-14-21, 5-14-22

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**STATE OF OHIO,**

**PLAINTIFF-APPELLEE,**

**CASE NO. 5-14-21**

**v.**

**JESSICA M. SIERRA,**

**OPINION**

**DEFENDANT-APPELLANT.**

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**STATE OF OHIO,**

**PLAINTIFF-APPELLEE,**

**CASE NO. 5-14-22**

**v.**

**JESSICA M. SIERRA,**

**OPINION**

**DEFENDANT-APPELLANT.**

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**Appeals from Hancock County Common Pleas Court  
Trial Court Nos. 2012CR248, 13CR00050, 13CR00189,  
13CR00132 and 07CR00145**

**Judgments Reversed and Cause Remanded in Case No. 5-14-15 and 5-14-19  
Appeals Dismissed in Case No. 5-14-20, 5-14-21 and 5-14-22**

**Date of Decision: May 4, 2015**

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**APPEARANCES:**

***Tim A. Dugan* for Appellant**

Case Nos. 5-14-15, 5-14-19, 5-14-20, 5-14-21, 5-14-22

***Elizabeth A. Smith* for Appellee**

**WILLAMOWSKI, J.**

{¶1} Defendant-appellant Jessica Sierra (“Sierra”) brings this appeal from the judgment of the Court of Common Pleas of Hancock County ordering her to make restitution to the drug task force for the money used in the drug sales for which she was convicted. For the reasons set forth below, the appeals in appellate cases numbered 5-14-20, 5-14-21, and 5-14-22 are dismissed. The judgments in appellate cases numbered 5-14-15 and 5-14-19 are reversed.

{¶2} This appeal arises from sentencing entries for various offenses and convictions. A brief history of each case will be provided.

*Case No. 2012-CR-00248*

{¶3} On October 16, 2012, the Hancock County Grand Jury indicted Sierra on one count of trafficking in cocaine in violation of R.C. 2925.03(A), one count of possession of cocaine in violation of R.C. 2925.03(A), and one count of possession of marijuana in violation of 2925.11(A). Doc. 1. Sierra entered a guilty plea to all counts on September 27, 2013. Doc. 73. The written guilty plea specified that Sierra “may also be made to pay applicable restitution and court costs \* \* \*.” *Id.* at 2. No other mention of restitution or reimbursement was contained in the guilty plea. A sentencing hearing was held on April 10, 2014. Doc. 99. The trial court entered judgment sentencing Sierra to a prison term and

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also ordered that Sierra “pay reimbursement costs in the amount of Fifty Dollars (\$50.00) to Hancock METRICH Drug Task Force[.]” *Id.* at 2. Sierra appealed from this judgment and it was assigned appellate case number 5-14-15.

*Case No.2013-CR-00050*

{¶4} On February 19, 2013, the Hancock County Grand Jury indicted Sierra on two counts of trafficking in cocaine in violation of R.C. 2825.03(A). Doc. 1. Sierra entered a guilty plea to all counts on September 27, 2013. Doc. 49. The written guilty plea specified that Sierra “may also be made to pay applicable restitution and court costs \* \* \*.” *Id.* at 2. No other mention of restitution or reimbursement was contained in the guilty plea. A sentencing hearing was held on April 10, 2014. Doc. 75. The trial court entered judgment sentencing Sierra to a prison term and also ordered that Sierra “pay reimbursement costs in the amount of Seven Hundred Fifty Dollars (\$750.00) as to Count One and the amount of Seven Hundred Fifty Dollars (\$750.00) as to Count Two both payable to Hancock METRICH Drug Task Force[.]” *Id.* at 2. Sierra appealed from this judgment and it was assigned appellate case number 5-14-19.

*Case No. 2013-CR-00189*

{¶5} On September 17, 2013, the Hancock County Grand Jury indicted Sierra on one count of intimidating a witness in violation of R.C. 2921.04(B)(2). Doc. 1. Sierra entered a guilty plea to the charge on March 10, 2014. Doc. 26.

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The written guilty plea specified that Sierra “may also be made to pay applicable restitution and court costs \* \* \*.” *Id.* at 2. No other mention of restitution or reimbursement was contained in the guilty plea. A sentencing hearing was held on April 10, 2014. Doc. 31. The trial court entered judgment sentencing Sierra to a prison term, but no restitution or reimbursement was ordered. *Id.* at 2. Sierra appealed from this judgment and it was assigned appellate case number 5-14-20.

*Case No. 2013-CR-00132*

{¶6} On June 25, 2013, the Hancock County Grand Jury indicted Sierra on one count of failure to appear in violation of R.C. 2937.29; 2937.99(A). Doc. 1. Sierra entered a guilty plea to the charge on September 27, 2013. Doc. 21. The written guilty plea specified that Sierra “may also be made to pay applicable restitution and court costs \* \* \*.” *Id.* at 2. No other mention of restitution or reimbursement was contained in the guilty plea. A sentencing hearing was held on April 10, 2014. Doc. 43. The trial court entered judgment sentencing Sierra to a prison term, but no restitution or reimbursement was ordered. *Id.* at 2. Sierra appealed from this judgment and it was assigned appellate case number 5-14-21

*Case No. 2007-CR-00145*

{¶7} On June 19, 2007, the Hancock County Grand Jury indicted Sierra on one count of possession of cocaine in violation of R.C. 2925.11(A). Doc. 1. Sierra entered a guilty plea to the charge on June 12, 2008. Doc. 43. The written

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guilty plea specified that Sierra “may also be made to pay applicable restitution and court costs \* \* \*.” *Id.* at 2. No other mention of restitution or reimbursement was contained in the guilty plea. A sentencing hearing was held on June 12, 2008. Doc. 48. The trial court entered judgment sentencing Sierra to a prison term, but no restitution was ordered. *Id.* at 2. On August 22, 2008, Sierra filed a motion for judicial release. Doc. 68. This motion was granted on November 24, 2008. Doc. 80. Sierra was then placed under community control sanctions. *Id.* July 15, 2013, a notice of violation of community control sanctions was filed. Doc. 103. A hearing on the alleged violations was held on August 19, 2013 and the trial court ordered that the community control sanctions be revoked and Sierra was ordered to return to prison. Doc. 111. No restitution or reimbursement was ordered in relation to this case. Sierra appealed from this judgment and it was assigned appellate case number 5-14-22.

{¶8} The appeals were all consolidated into case no. 5-14-15. On appeal, Sierra raises two assignments of error.

#### **First Assignment of Error**

**The trial court committed plain error when it ordered [Sierra] to reimburse the Hancock METRICH Task Force for money it spent on drug buys.**

### **Second Assignment of Error**

**[Sierra] received ineffective assistance of counsel, in violation of her rights under the Sixth Amendment of the United States Constitution as Counsel failed to object to the trial court ordering [Sierra] to reimburse the Hancock METRICH Task Force for money it spent on drug buys.**

{¶9} Initially this court notes that both assignments of error are based upon the trial court having ordered Sierra to pay money to the Hancock METRICH Task Force. However, this was only ordered in Appellate Case Numbers 5-14-15 and 5-14-19. No restitution or reimbursement was ordered in Appellate Cases Numbered 5-14-20, 5-14-21, or 5-14-22. The assignments of error do not apply to those cases. An appellate court determines an appeal on the “merits on the assignments of error set forth in the briefs[.]” App.R. 12(A)(1)(b). If an appellant fails to assign error to a judgment on appeal, the appellate court need not address it. *Citibank, N.A. v. LaPierre*, 10th Dist. Franklin No. 13AP-30, 2013-Ohio-3016, ¶7. Here, there are no assignments of error applicable to Appellate Cases 5-14-20, 5-14-21, and 5-14-22. Therefore, there is no error for this court to review and the appeals as to these cases are dismissed.

{¶10} This leaves cases numbered 5-14-15 and 5-14-19 in which Sierra was ordered to make reimbursement to the drug task force. Sierra argues in the first assignment of error that this order was contrary to law because it is a payment

ordered to a third party. Financial sanctions such as restitution and reimbursement are governed by R.C. 2929.18.

**(A) Except as otherwise provided in this division and in addition to imposing court costs pursuant to [R.C. 2947.23], the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section or, in the circumstances specified in [R.C. 2929.32], may impose upon the offender a fine in accordance with that section. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:**

**(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. \* \* \***

**\* \* \***

**(5)(a) Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the following:**

**(i) All or part of the costs of implementing any community control sanction, including a supervision fee under [R.C. 2951.021].**

**(ii) All or part of the costs of confinement under a sanction imposed pursuant to [R.C. 2929.14, 2929.142, or 2929.16], provided that the amount of reimbursement ordered under this division shall not exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and shall not exceed the actual cost of the confinement.**

**(iii) All or part of the cost of purchasing and using an immobilizing or disabling device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use under [R.C. 4510.13].**



**(b) If the offender is sentenced to a sanction of confinement \* \* \* that is served in a facility operated by a board of county commissioners, a legislative authority of a municipal corporation, or another local governmental entity \* \* \* for its expenses incurred by reason of the prisoner's confinement, and if the court does not impose a financial sanction under division (A)(5)(a)(ii) of this section, confinement costs may be assessed pursuant to [R.C. 2929.37]. In addition, the offender may be required to pay the fees specified in [R.C. 2929.38] in accordance with that section.**

**(c) Reimbursement by the offender for costs [to investigate the crime of arson as set forth in R.C. 2929.71].**

R.C. 2929.18(A). This court has repeatedly held that restitution can only be ordered paid to the actual victim of an offense. *State v. Bustamante*, 3d Dist. Seneca Nos. 13-12-26, 13-13-04, 2013-Ohio-4975; *State v. Taylor*, 3d Dist. Seneca No. 13-10-49, 2011-Ohio-5080; *State v. Stewart*, 3d Dist. Wyandot No. 16-08-11, 2008-Ohio-5823; and *State v. Toler*, 174 Ohio App.3d 335, 2007-Ohio-6967, 882 N.E.2d 28 (3d Dist.). *See also State v. Lalain*, 136 Ohio St.3d 248, 2013-Ohio-3093, 994 N.E.2d 423 (stating that a trial court is authorized by statute to order restitution to compensate a victim for economic loss). Although a government entity may be a victim of an offense, “a government entity voluntarily advancing its own funds to pursue a drug buy \* \* \* is not one of the scenarios contemplated by R.C. 2929.18(A)(1)” *Taylor, supra* at ¶57. Drug task forces are not victims and a defendant cannot be required to pay restitution. *State v. Moorer*,

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3d Dist. Seneca No. 13-12-22, 2013-Ohio-650 citing *State v. Dietrich*, 3d Dist. Allen No. 1-10-76, 2011-Ohio-4347.

{¶11} In support of this order, the State makes two arguments. First, the State argues that this is not restitution, but is instead reimbursement for the costs of the investigation. Sierra argues that although the State and the trial court labeled this as a reimbursement, it really was not reimbursement, but was actually restitution. We agree. The statute provides for reimbursement for the costs of sanctions imposed. The only investigative costs permitted by the statute are for the costs associated with investigating an arson, which is specifically authorized by R.C. 2929.71. There currently is no specific statutory authorization for the recovery of investigative costs associated with a drug task force. The investigation is not part of the sanction. The plain language of the statute does not provide for reimbursement to a drug task force nor does it provide for reimbursement of investigative costs in this case.

{¶12} The State next argues that the order is permitted because Sierra agreed to it pursuant to the terms of the plea agreement. A review of the two plea agreements do not indicate that Sierra agreed to pay restitution to the drug task force. The only mention of restitution was found in the boilerplate language indicating that she might be ordered to make restitution. The plea agreement did

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not specify that any restitution would be made to a party not permitted by the statute.

{¶13} At the hearing on March 10, 2014, the State indicated that it “would still be requesting reimbursement” in the amount of \$100, \$750, and \$1,500. Tr. 6. At the sentencing hearing on April 10, 2014, the State again stated that it would be requesting reimbursement to the drug task force for the buy money. Tr. 9. There is a difference between agreeing that the State can request reimbursement and agreeing to pay it. The trial court did not even order what was requested in that it ordered reimbursement in the amounts of \$50, \$750, and \$750 respectively. Although the State might have intended to get this agreement, it did not actually do so in this case. The written plea agreements were silent as to paying reimbursement or restitution to the drug task force and the statements made at the hearings merely indicate an agreement that the State could request the reimbursement. This is not an agreement to pay. Based upon the facts of this case, there is no agreement to pay restitution to the drug task force and they are not a victim of the offense. Therefore, the trial court erred in ordering Sierra to pay reimbursement to the Hancock METRICH Drug Task Force. The first assignment of error is sustained.

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{¶14} Having sustained the first assignment of error, the second assignment of error is rendered moot. We therefore decline to address this issue further. App.R.12(A)(1)(c).

{¶15} The appeals in cases numbered 5-14-20, 5-14-21, and 5-14-22 are dismissed as no error was assigned in them. Having found error prejudicial to the appellant in cases numbered 5-14-15 and 5-14-19, those cases are reversed and the matter is remanded for further proceedings in accord with this opinion.

*Judgments Reversed and  
Causes Remanded in  
Case Nos. 5-14-15 and 5-14-19*

*Appeals Dismissed in  
Case Nos. 5-14-20, 5-14-21, and 5-14-22.*

**ROGERS, P.J. and SHAW, J., concur.**

/jlr